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COMPARATIVE COMMENTARIES ON
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COMPARATIVE COMMENTARIES ON PRIVATE INTERNATIONAL LAW OR CONFLICT OF LAWS, by Arthur K. Kuhn. The Macmillan Co., New York, 1937. Pp. xii, 381. \$4.50.

The first comprehensive treatise by a common law writer on conflict of laws was based essentially on comparative law studies. This treatise, by Mr. Justice Story, had an unequalled influence both in the United States and in England. It is somewhat extraordinary, therefore, that the common law had to wait a hundred years for another treatise in this field which frankly adopted the comparative treatment.¹ Thus Mr. Kuhn is entitled to recognition, quite apart from the intrinsic merit of his book, for having rediscovered the path once laid with so much erudition by Story but long buried under the leaves falling from the tree of smug legal provincialism.

Mr. Kuhn's book is, by its very nature, limited in compass and in treatment. Besides two introductory chapters, devoted to a brief survey of the history of private international law and of the nature and scope of the subject, concrete conflict of laws problems are considered under the following topical headings: Nationality and Domicil; Jurisdiction and Procedure; Status and Capacity of Persons; Contract and Status of Marriage; Dissolution of the Marriage Status; Parent and Child; Property; Contracts; Foreign Torts; and Succession upon Death. In other words, conflict of laws problems in the field of private law make up the bulk; commercial law is not treated—except incidentally with respect to shares, bonds and negotiable instruments and their assignment in connection with intangible property.²

Another limitation which the author imposed upon himself is with respect to the analysis of foreign law. As he points out in the Preface, "Not all the foreign systems are referred to, nor could any single foreign system be presented with completeness."³ The necessity for this limitation is obvious and does not in any way detract from the value of the book. The objective of comparative treatment is not to turn the American lawyer into an accomplished expert in foreign law, but to serve as a guide for him and to inspire ideas through the reflection of foreign law on our own law.

1. Westlake's treatise, it is true, refers to Roman and civil law analogies, and writings of Professors Beale and Lorenzen dealt occasionally with foreign rules of conflict of laws.

2. Pp. 243 et seq.

3. P. vi.

Within this limited compass, however, Mr. Kuhn has made a useful and interesting contribution to legal literature. The story contained in the pages is not as coherent as one might wish it to be; in more than one instance it is somewhat fragmentary. Yet, having read it through, one puts it down with the feeling that it was illuminating.

It is surprising that in many respects the approach to conflict of laws problems is very similar in common law and civil law jurisdictions. There is substantial agreement on many basic principles. Thus it is agreed generally that the public policy of the forum is a limitation on the applicability of foreign law; the unenforceability of foreign penal and revenue laws is almost uniformly accepted, as is the principle that rules of procedure are governed by the law of the forum. The difficulties result from the large divergence in the application of these generally accepted precepts. Neither the common nor the civil law practice is helpful in answering the question how to define the "unruly horse" of public policy,⁴ or what the *criteria* are for determining what laws are penal.⁵

On the other hand, there are fundamental differences which cause one to wonder whether the civilians and the common law lawyers will ever speak the same language. Thus the differences resulting from the adoption by civil law countries of the principle of national law applicable to citizens abroad are strikingly illustrated in the chapters devoted to personal status and family relations; they indicate the difficulties in reaching a compromise with common law jurisdictions.

The continental civil law approach to some problems, where it is different from our approach, ought to be interesting; in some instances it should prove definitely helpful, as, for example, the method of proof of foreign law in civil law countries,⁶ or the flexible German and Swiss devices for regulating marital property rights in case the personal law of the spouses changes.⁷

The source material on which the analysis is based reflects the author's familiarity with the technique of both the common and the civil law—a familiarity acquired by long years of practice as well as scholarly research. Although the common law is discussed primarily in view of court decisions, Mr. Kuhn did not fail

4. Pp. 33-34.

5. Pp. 44 et seq.

6. Pp. 100-102.

7. Pp. 153-154.

to take account of the views of outstanding writers and to refer in each instance to the rule suggested by the Restatement of Conflict of Laws adopted by the American Law Institute. On the other hand, although the civil law is analyzed on the basis of the primary source of that law—codes, statutes and textwriters—Mr. Kuhn did not fail to take account of case-law which becomes of increasing importance and authority in civil law countries. This reviewer should like to record his particular satisfaction over the attention which Mr. Kuhn has paid to Latin-American countries and to the Bustamente Code on private international law adopted at the Sixth International Conference of American States at Havana in 1928 and which is in force between a number of American States.

There are, however, some omissions and oversights in Mr. Kuhn's otherwise praiseworthy accomplishment.

As to omissions, one looks in vain for a discussion of the doctrine of qualification which has been, for some time, so much in the center of discussion in civil law countries, particularly in Europe. In the section devoted to alimony, especially in dealing with foreign alimony decrees in England, a reference to, or a brief discussion of, the legislation relating to the enforcement of alimony and maintenance judgments in the *inter sese* relations of England and the Dominions⁸ would have been appropriate. Also, it seems that the author limited himself too much to stating the law as it appears in decisions, statutes or codes, instead of subjecting it to a searching analysis and criticism as he has done in the case of the troublesome *renvoi* doctrine⁹ or with respect to the Restatement's adoption of the outmoded common law rule as to the effect of change of domicile upon testamentary capacity.¹⁰

As to oversights, Mr. Kuhn discussed¹¹ the enforcement of foreign tax claims in the light of the rule laid down in *Colorado v. Harbeck*,¹² overlooking the decision of the United States Supreme Court in *Milwaukee County v. White Co.*¹³ In discussing the doctrine of *renvoi*, Mr. Kuhn did not point out that the New York court misinterpreted the French rule of conflict of laws in the *Tallmadge* case.¹⁴

8. Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 & 11 Geo. 5, c. 33.

9. Pp. 49 et seq.

10. Pp. 328-329.

11. Pp. 46-47.

12. 232 N.Y. 71, 133 N.E. 357 (1921).

13. 296 U.S. 268, 56 S.Ct. 229, 80 L.Ed. 220 (1935).

14. In re Tallmadge, 109 Misc. 696, 181 N.Y. Supp. 336 (1919).

The attention of the author is called to these oversights and omissions in the confident expectation that a revised and enlarged edition of this book will soon be required.

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THE BANKRUPTCY ACT OF 1938 (CHANDLER ACT)—A COMPARATIVE ANALYSIS, By Jacob I. Weinstein. National Association of Credit Men, New York, 1938. Pp. iv, 497. \$5.00.

The author and compiler of this excellent and valuable book is especially qualified for the work he has done. Because of his experience and the painstaking and thorough treatment he has given to the subject, he has made available a discussion of an important law and this should be in the hands of the general practitioner, the student and the teacher. As a member of the Philadelphia Bar and of the Bankruptcy Committee of the Commercial Law League of America and the National Bankruptcy Conference, Mr. Weinstein was one of a Special Committee who carefully studied the subject matter for six years. Furthermore, he assisted in drafting the "Chandler Act" which is a complete revision and re-enactment of the Bankruptcy Law.

The foreword by the Hon. Walter Chandler, Member of Congress from the 9th District of Tennessee, pays full tribute to those whose work and efforts were essential in the drafting and passage of this important legislation. Mr. Weinstein himself, in his preface, gives credit to the intensive and earnest work of the Bankruptcy Committees of the American Bar Association, the Commercial Law League of America, the National Association of Credit Men, the American Bankers Association and others composing the National Bankruptcy Council, who have been responsible for building up a revised Bankruptcy Act that would be responsive to the requirements of our present day economic and business structure and would properly serve and safeguard the needs and interests of both debtors and creditors. It is seldom indeed that legislation receives the careful consideration and assistance from organizations as important and necessary as those who worked on the drafting of the new act.

The present work undertakes to give a comparative analysis

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